

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA (INDIANAPOLIS)**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**JAMES H. TROTTER, SR., SYLVIA TROTTER,
TROTTER CONSTRUCTION COMPANY, INC.,
TROTTER DEVELOPMENT GROUP, NC, LLC, &
the TROTTER CONSTRUCTION COMPANY, INC.
401(k) PLAN,**

Defendants.

Case No. 11-cv-00881

Hon. Robert L. Young

CONSENT ORDER AND JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor ("Plaintiff"), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., Trotter Development Group, NC, LLC and the Trotter Construction Company, Inc. 401(k) Plan alleging breaches of fiduciary responsibilities under ERISA §§403(a) and (c)(1), 404(a)(1)(A) and (D), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§1103(c)(1), 1104 (a)(1)(D), 1106(a)(1)(D), 1106(b)(1) and (2), and 405(b)(1), 29 U.S.C. §1105(b)(1) with respect to the Trotter Construction Company, Inc. 401(k) Plan ("the 401(k) Plan") and certain welfare plans established between February 1, 2004 and December 31, 2009 by Trotter Construction Company, Inc. and Trotter Development Group, NC, LLC ("the

Trotter Group Health Plans"). Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., Trotter Development Group, NC, LLC and the 401(k) Plan have waived service of process of the complaint, have answered, and admit to the jurisdiction of this Court over them and to the subject matter of this action. Defendants James H. Trotter, Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC, neither admit nor deny the allegations in the Plaintiff's complaint.

The Plaintiff and Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., Trotter Development Group, NC, LLC and the 401(k) Plan have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Judgment and Order by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the "applicable recovery amount" shall include all amounts paid in accordance with this Consent Order and Judgment.

Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC have provided proof to the United States Department of Labor Employee Benefits Security Administration ("EBSA") that between January 21, 2010 and December 28, 2011, they restored a total of \$16,705.99 to the 401(k) Plan participants in employee contributions and loan repayments withheld during the period from January 1, 2004 through May 15, 2009 and lost opportunity costs

associated therewith. Defendants James H. Trotter, Sr., Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC have also provided proof to EBSA that between January 21, 2010 and December 28, 2011, they restored a total of \$3,161.28 in employee health premium contributions and lost opportunity costs directly to participants of the Trotter Group Health Plans for employee premium contributions that were withheld during the period from January 1, 2009 through December 31, 2009.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc. and Trotter Development Group, NC, LLC are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc. and Trotter Development Group, NC, LLC are jointly and severally liable to the 401(k) Plan participants in the amount of \$269.28, which represents the remaining unpaid lost opportunity costs which accrued as a result of the untimely remittance of employee contributions and loan repayments to the Plan for the time period from April 1, 2010 through December 28, 2011.
3. Immediately upon entry of this Consent Order and Judgment, Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC shall pay \$269.28 directly to the 401(k) Plan participants, other than Defendants James H. Trotter, Sr. and Sylvia Trotter, who: (1) were employees of Trotter Construction, Inc. and/or Trotter Development Group, NC, LLC; (2) were 401(k)

Plan participants during the period from January 1, 2004 through May 15, 2009; (3) who had employee contributions and loan repayments withheld from their pay for remittance to the 401(k) Plan during this period; and (4) had lost opportunity costs for such contributions which have not yet been fully restored to their individual investment accounts. James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC shall allocate the aforementioned money to the 401(k) Plan participants in an amount equal to the lost opportunity costs still owed to each participant. Within ten (10) days after the aforesaid allocation, the defendants shall provide proof of such payment and allocation to the Regional Director, Cincinnati Regional Office, Employee Benefits Security Administration, Ft. Wright Executive Building I, 1885 Dixie Highway, Suite 210, Ft. Wright, KY41011.

4. In addition to the losses owed to the 401(k) Plan, as set forth in paragraph 2 above and the money paid by Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC to the 401(k) Plan participants prior to execution of the Consent Order and Judgment, Defendant James H. Trotter, Sr. is owed \$21,562.20 as a result of his failure to remit employee contributions, loan repayments and lost opportunity costs for unremitted employee contributions and loan repayments to the 401(k) Plan on his own behalf. Defendant James H. Trotter, Sr. hereby waives the repayment of this sum as part of the resolution of this matter.

5. In addition to the losses owed to the 401(k) Plan, as set forth in paragraph 2 above and the money paid by Defendants James H. Trotter, Sr., Sylvia Trotter, Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC to the 401(k)

Plan participants prior to execution of the Consent Order and Judgment, Defendant Sylvia Trotter is owed \$4,003.72 as a result of her failure to remit employee contributions, loan repayments and lost opportunity costs for unremitted employee contributions and loan repayments to the 401(k) Plan on her own behalf. Defendant Sylvia Trotter hereby waives the repayment of this sum as part of the resolution of this matter.

6. Defendants James H. Trotter, Sr., Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC are jointly and severally liable to the Trotter Group Health Plans in the total amount of \$19,236.33 in unremitted employee premium contributions for the period from December 22, 2008 through December 31, 2009 and lost opportunity costs.

7. In addition to the losses owed to the Trotter Group Health Plans as set forth in paragraph 6 above and the money paid by Defendants James H. Trotter, Sr., Trotter Construction Company, Inc., and Trotter Development Group, NC, LLC directly to the participants in the Trotter Group Health Plans prior to execution of this Consent Order and Judgment, Defendant James H. Trotter, Sr. is owed \$1,273.76 as a result of his failure to remit employee premium contributions to the Trotter Group Health Plans on his own behalf. Defendant James H. Trotter, Sr. hereby waives the repayment of this sum as part of the resolution of this matter.

8. No later than 30 days after the entry of this Consent Order and Judgment, Defendants James H. Trotter, Sr., Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC shall pay the \$19,236.33 owed to the Trotter Group Health Plans directly to the Plan's participants, by issuing individual checks to

each of the Plan participants, other than Defendant James H. Trotter, Sr., who: (1) were employees of Trotter Construction, Inc. and/or Trotter Development Group, NC, LLC; (2) were participants in the Trotter Group Health Plans during the period from December 22, 2008 through December 31, 2009; and (3) who had employee premium withheld from their pay for remittance to the Trotter Group Health Plans during this period.

9. To the extent that defendants James H. Trotter, Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC make any payments pursuant to par. 8 above, prior to the entry of this Consent Order and Judgment by the Court, they shall provide sufficient proof of such payment to the Regional Director, Cincinnati Regional Office, Employee Benefits Security Administration, Ft. Wright Executive Building I, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011. The Regional Director will notify the Defendants within fifteen days of the production of such proof as to whether their payments have reduced the payment amount owed to the Plan, as set forth in par. 8 above.

10. No later than forty (40) days after entry by the Court of this Consent Order and Judgment, Defendants James H. Trotter, Sr., Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC shall provide proof that they have paid a total of \$19,236.33 to the affected participants of the Trotter Group Health Plans in the manner set forth in par. 8 by forwarding such proof to the Regional Director, Cincinnati Regional Office, Employee Benefits Security Administration, Ft. Wright Executive Building I, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011.

11. Should Defendants James H. Trotter, Sr., Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC fail to provide proof of payment as

described in paragraphs 6, 8, 9 and 10, by the dates set forth therein, the entire amount of the balance remaining shall become due and payable immediately by Defendants James H. Trotter, Sr., Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC, together with post-judgment interest pursuant to 28 U.S.C. §1961, with no further notice or demand required by the Secretary to Defendants James H. Trotter, Sr., Trotter Construction Companies, Inc. and Trotter Development Group, NC, LLC.


12. Defendants James H. Trotter, Sr. and Sylvia Trotter shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to any employee benefit plan subject to ERISA.

13. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

14. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

15. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

DATED: 07/18/2012

A handwritten signature in blue ink, appearing to read 'R. Young', is written over a horizontal line.

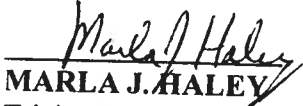
RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

The parties hereby consent to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR

M. PATRICIA SMITH
Solicitor of Labor

Regional Solicitor
JOAN E. GESTRIN


MARLA J. HALEY
Trial Attorney
P.O. ADDRESS:
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U.S. Department of Labor
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Chicago, Illinois 60604
Haley.Marla@dol.gov
Tel. 312-353-4455
Fax 312-353-5698

DATED: 7/9/12

FOR THE DEFENDANTS:



JAMES H. TROTTER, SR.

DATED: 6/27/12


SYLVIA TROTTER

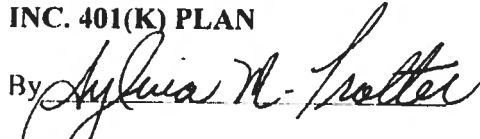
DATED: 6/27/12

**TROTTER CONSTRUCTION
COMPANY, INC.:**

By 
Its _____


DATED: 6-27-2012

**TROTTER CONSTRUCTION COMPANY,
INC. 401(K) PLAN**

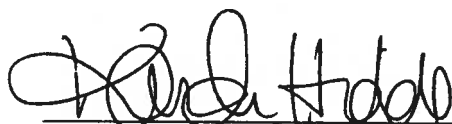
By 
Its _____

DATED: June 27, 2012

**TROTTER DEVELOPMENT
GROUP, NC, LLC:**

By 
Its _____

DATED: 6-27-2012


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DATED: 6-27-2012